

#4

S/N 09/887,272PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Yu-Ming Hou et al. Examiner: Unknown  
Serial No.: 09/887,272 Group Art Unit: Unknown  
Filed: June 22, 2001 (per date stamped postcard) Docket: 1360.003US2  
Title: PLANT GENES INVOLVED IN DEFENSE AGAINST PATHOGENS

PETITION UNDER 37 C.F.R. § 1.78(a)(3)

Box DAC  
Commissioner for Patents  
Washington, D.C. 20231

Pursuant to 37 C.F.R. § 1.78(a)(3), Applicant requests entry of the Preliminary Amendment filed herewith which amends the "Cross-Reference to Related Applications" section of an application corresponding to Express Mail Label No. EL671641675US.

The present application (corresponding to Express Mail No. EL671641675US) was accorded Serial No. 09/887,272 and a filing date of June 22, 2001 (Exhibit A, a copy of the date stamped postcard for Express Mail No. EL671641675US). However, another application (Express Mail No. EL721275472US), filed on June 22, 2001, was accorded that same serial number (Exhibit B, a copy of the date stamped postcard for Express Mail No. EL721275472US).

On September 20, 2001, Applicant's Representatives requested that the U.S. Patent and Trademark Office (USPTO) correct this error by issuing a new serial number for the application corresponding to Express Mail No. EL671641675US (see Exhibit C). A representative of the USPTO, Janice Tippet, Assistant to the Director of OIPE, provided Applicant's Representatives with a handwritten note which indicated that the serial number for the application corresponding to Express Mail No. EL721275472US was to be accorded Serial No. 09/887,271 (Exhibit D). However, as of October 30, 2001, Applicant's Representatives have not received an official communication from the USPTO evidencing that Express Mail No. EL721275472US was issued a serial number that was different than the serial number issued to the application corresponding to Express Mail No. EL671641675US. While such a communication would provide clarity in identifying and distinguishing the two applications referred to above, on October 24, 2001, Applicant's Representatives began preparing this Petition pursuant to 37 C.F.R. § 1.78(a)(3) relying on the information in the handwritten note (Exhibit D).

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Serial Number: 09/887,272

Filing Date: June 23, 2001

Title: PLANT GENES INVOLVED IN DEFENSE AGAINST PATHOGENS

Page 2

Dkt: 1360.003US2

Thus, in the Preliminary Amendment filed herewith, Applicant's Representatives request that the "Cross-Reference to Related Applications" section of the application having Express Mail No. EL671641675US be amended to reflect that that application is related to an application corresponding to Express Mail No. EL721275472US.

Applicant's Representatives respectfully submit that the delay in claiming the benefit of the filing date of the application corresponding to Express Mail No. EL671641675US between the date provided under 37 C.F.R. § 1.78(a)(2) and the date on which this Petition was filed, was unintentional.

Accordingly, Applicant requests that the amendment to the specification in the Preliminary Amendment enclosed herewith be entered.

Please charge any fees deemed due to Deposit Account No. 19-0743.

Respectfully submitted,

YU-MING HOU ET AL.,

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6959

Date October 30, 2001 By Janet E. Emberson  
Janet E. Emberson  
Reg. No. 39,665

**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Commissioner of Patents, Washington, D.C. 20231, on this 30th day of October, 2001.

Dawn M. Poole  
Name

Dawn M. Poole  
Signature

In re Patent Application of: Sheng Quan et al.

Title: PLANT GENES INVOLVED IN DEFENSE AGAINST PATHOGENS

Attorney Docket No.: 1360.003US+

1

NPN

Receipt is hereby acknowledged for the following in the United States Patent and Trademark Office:

**CONTENTS:** UTILITY PATENT APPLICATION: Specification (1474 pgs. including claims numbered 1 through 43 and a 1 page Abstract); Formal Drawing(s) (349 sheets); Unsigned Combined Declaration and Power of Attorney (2 pgs); Sequence Listing (5241 pages); Communication Under 37 CFR § 1.521 (1 page); A copy of the Sequence Listing in ASCII computer readable form; return postcard and transmittal sheet.

FILED WITHOUT APPLICATION FILING FEE.

EXPRESS MAIL LABEL NO. EL721275472US

Mailed: June 22, 2001

JEE/dmp

1c398 U.S. PTO

09/887272

06/23/01

EXHIBIT A

In re Patent Application of: Sheng Quan et al.

Title: PLANT GENES INVOLVED IN DEFENSE AGAINST PATHOGENS

Attorney Docket No.: 1360.003US2

NPN

Receipt is hereby acknowledged for the following in the United States Patent and Trademark Office:

CONTENTS: UTILITY PATENT APPLICATION: Specification (1855 pgs, including claims numbered 1 through 43 and a 1 page Abstract); Unsigned Combined Declaration and Power of Attorney (2 pgs); Communication Under 37 CFR § 1.821 (1 page); Two copies (CD-ROM) of the Sequence Listing in ASCII computer readable form in compliance with 37 CFR §§ 1.821(e) and 1.52(e); One copy (CD-ROM) of the Sequence Listing in ASCII computer readable form in compliance with 37 CFR §§ 1.821(e) and 1.52(e); three transmittals for CD-ROMs in compliance ~~with~~ with 37 CFR § 1.52(e)(3)(ii); return postcard and transmittal sheet.

FILED WITHOUT APPLICATION FILING FEE.

EXPRESS MAIL LABEL NO. EL671641675US

Mailed: June 23, 2001

JEE

Jc398 U.S. PTO

09/887272

06/22/01

EXHIBIT B

OCT-03-2001 12:18

703 415 1000 P.03/03

**PATENT**S/N 09/887,272**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Yu-Ming Hou et al.

Examiner: Unknown

Serial No.: 09/887,272 (Per date-stamped postcard)

Group Art Unit: Unknown

Filed: June 23, 2001

Docket: 1360.003US2

Title:

PLANT GENES INVOLVED IN DEFENSE AGAINST PATHOGENS**REQUEST TO CORRECT**  
**U.S. PATENT AND TRADEMARK OFFICE ERROR**

VIA Hand Delivery  
ATTN: Mr. Thomas Koontz  
Director, OIPE  
Commissioner for Patents  
Washington, D.C. 20231

This is a Request to Correct a U.S. Patent and Trademark Office Error. Applicant's Representatives filed two applications, one on June 22, 2001 (Express Mail number EL721275472US, Docket No. 1360.003US1) and the other on June 23, 2001 (Express Mail number EL671641675US, Docket No. 1360.003US2). Upon receipt of the date stamped postcard for each application, Applicant's Representatives noted that the postcards indicated that the U.S. Patent and Trademark Office accorded each application the exact same filing date and serial number. A copy of each of the date stamped postcards is attached hereto.

Applicant's Representatives request that the application having Express Mail number EL671641675 (Docket No. 1360.003US2) be issued a new serial number, and that the records be corrected to reflect that the application having Express Mail number EL671641675 (Docket No. 1360.003US2) is accorded that new serial number and has a filing date of June 23, 2001.

Respectfully submitted,

YU-MING HOU ET AL.

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6959

Date

September 19, 2001

By

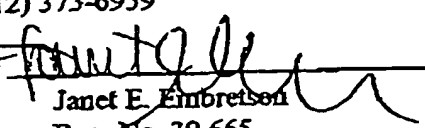
  
Janet E. Embretson  
Reg. No. 39,665

Exhibit C

TOTAL P.03

OCT-03-2001 12:18

703 415 1000 P.02/03

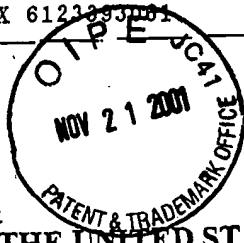
From: JANICE TIPPETT  
ASST TO DIRECTOR OF OIPE

09/887271 6/22/01  
EL 721275472US

09/887272 6/22/01 -  
EL 671641675US  
↑  
NOTE:

C

EXHIBIT D

**S/N 09/887,272****PATENT****IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: Yu-Ming Hou et al.

Examiner: Unknown

Serial No.: 09/887,272 (per date stamped postcard)

Group Art Unit: Unknown

Filed: June 22, 2001

Docket: 1360.003US1

Title: PLANT GENES INVOLVED IN DEFENSE AGAINST PATHOGENS

**PRELIMINARY AMENDMENT****VIA HAND DELIVERY**

Box DAC

Commissioner for Patents

Washington, D.C. 20231

Before taking up the above-identified application for examination, please enter the following amendments.

**In the Specification**

Please delete the paragraph beginning on page 1, line 4. Specific amendments to page 1, the paragraph beginning on line 4, are detailed in the following marked-up paragraph:

[This application claims the benefit of the filing date of U.S. application Serial No. 60/213,634, filed on June 23, 2000, U.S. application Serial No. 60/214,926, filed on June 23, 2000, U.S. application Serial No. 60/261,320, filed on January 12, 2001, U.S. application Serial No. 60/264,353, filed on January 26, 2001, and U.S. application Serial No. 60/273,879, filed on March 7, 2001 under 35 U.S.C. § 119(e)].

**Remarks**

The specification is amended so as to amend the priority claim of the above-identified application. Based on the present claim of priority, i.e., to June 22, 2001, Applicant requests that timing of the publication of the above-identified application be delayed until 18 months from June 22, 2001 as provided by 37 C.F.R. § 1.211(a).

This Preliminary Amendment is accompanied by a Petition under 37 C.F.R. § 1.78(a)(3) requesting that the "Cross Reference to Related Applications" section of the above-identified application be amended as indicated hereinabove.

Page 2

Dkt: 1360.003US1

Serial Number: 09/887,272

Filing Date: June 22, 2001

Title: PLANT GENES INVOLVED IN DEFENSE AGAINST PATHOGENS

The Examiner is invited to contact the below-signed attorney with any questions regarding the present application.

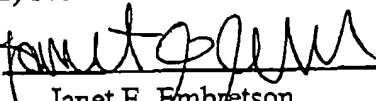
Respectfully submitted,

YU-MING HOU ET AL.,

By their Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
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Date November 21, 2001

By   
Janet E. Embretson  
Reg. No. 39,665



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